

DEPARTMENT OF STATE REVENUE
SUPPLEMENTAL LETTER OF FINDINGS NUMBER: 06-0041P
Individual Income Tax-Penalty
For the Year 2004

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ISSUE

I. Tax Administration—Penalty

Authority: IC § 6-8.1-10-2.1; 45 IAC 15-11-2.

Taxpayer protests the imposition of the ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer is a married couple residing outside Indiana. In 2004, the husband was a member of a limited liability company (LLC) which owned a corporation located in Indiana.

In 2004, LLC's managing director engaged an accounting firm to determine various nexus issues with respect to LLC's operations. However, LLC's managing director passed away in early 2005. Prior to April 15, 2005, LLC issued 1099-MISC forms to the members of the LLC indicating their respective shares of income from the LLC. Each member, including Taxpayer, assumed that the members would be taxed in their respective home states.

Later in 2005, the accounting firm determined that a portion of LLC's income should have been apportioned to Indiana. Accordingly, LLC sent out Indiana K-1's to its members reflecting their shares of income apportioned to Indiana. Taxpayer filed an Indiana return claiming the amount reflected on Taxpayer's Indiana K-1 on Taxpayer's Indiana income tax return. Upon receipt of the return, the Department assessed a late payment penalty, which Taxpayer protested.

I. Tax Administration—Penalty

DISCUSSION

Taxpayer protests the imposition of the ten percent negligence penalty for the taxes that the Department has imposed.

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10-2.1. The Indiana Administrative Code further provides:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

45 IAC 15-11-2.

Due to the unusual circumstances of the case (difficult apportionment/allocation issues, the death of LLC's manager, and Taxpayer's previous lack of contact with Indiana), Taxpayer has provided sufficient information to establish that it acted with reasonable care, and accordingly Taxpayer's protest of penalties by the Department is sustained.

FINDING

Taxpayer's protest is sustained.

JR/BK/DK September 7, 2006